ATTORNEY FOR APPELLANT:

GEORGE A. LEININGER
Kemper Collins & Hensley
Madison, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ARTHUR THADDEUS PERRY
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

MATTHEW KNIPPENBERG,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 15A04-0607-CR-390
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEARBORN CIRCUIT COURT
The Honorable James D. Humphrey, Judge
Cause No. 15C01-0511-FC-72

March 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Matthew Knippenberg appeals his aggregate three-year sentence on eight convictions for Class D felony impersonating a police officer. We affirm.

Issue

The sole restated issue before us is whether Knippenberg's sentence is appropriate.

Facts

On October 31, 2005, Knippenberg went to an elementary school playground in Lawrenceburg, approached a group of eight children, and identified himself as a police officer. The children ranged in age from twelve to seventeen. Knippenberg discussed curfew with the children and asked them if they knew when the playground was supposed to close. He then asked the children if they had any drugs in their possession and directed them to line up against the wall of the school. Knippenberg patted down the children, ostensibly searching for drugs. After patting down all of the children, Knippenberg told them that they needed to leave the playground.

On November 2, 2005, the State charged Knippenberg with one count of Class C felony sexual misconduct with a minor, one count of Class D felony sexual battery, one count of Class D felony possession of a controlled substance, and eight counts of Class D felony impersonating a police officer. On May 31, 2006, Knippenberg entered into a plea agreement with the State. Knippenberg agreed to plead guilty to all eight of the impersonating a police officer counts, with sentencing left to the trial court, and the State agreed to dismiss the remaining counts. On June 28, 2006, the trial court sentenced

Knippenberg to a term of three years for each conviction, to be served concurrently.[1] He now appeals.

Analysis

Knippenberg committed these offenses after our legislature replaced the "presumptive" sentencing scheme with the present "advisory" sentencing scheme. We are awaiting guidance from our supreme court as to how, precisely, appellate review of sentences under the new "advisory" scheme should proceed and whether trial courts must continue issuing sentencing statements explaining the imposition of any sentence other than an advisory sentence. See Gibson v. State, 856 N.E.2d 142, 146-47 (Ind. Ct. App. 2006). This court has split on the issue of whether such statements still must be issued. Compare Fuller v. State, 852 N.E.2d 22, 26 (Ind. Ct. App. 2006), trans. denied (holding that trial court is under no obligation to find or weigh any aggravating or mitigating circumstances) with McMahon v. State, 856 N.E.2d 743, 749 (Ind. Ct. App. 2006) (holding sentencing statements must be issued any time trial court deviates from advisory sentence).

Whether or not sentencing statements are required, it has been universally recognized that such statements are very helpful to this court in determining the appropriateness of a sentence under Indiana Appellate Rule 7(B). See Gibson, 856 N.E.2d at 147. The trial court here did issue a sentencing statement and we will utilize it

[1] The record before us is not entirely clear regarding Knippenberg's sentence. The "Pronouncement of Sentence" states that he "shall be imprisoned for a term of three (3) years" for all eight convictions. App. p. 8. It does not specifically state that the sentences shall be served concurrently. Knippenberg's brief assumes that they are, and we will analyze this case under the same assumption.

"as an initial guide to determining whether the sentence imposed here was inappropriate." Id. Under Rule 7(B), we may revise a sentence that we conclude is inappropriate in light of the nature of the offense and the character of the offender.

The trial court here found one aggravating circumstance, and that is Knippenberg's criminal history. "In assigning weight to a defendant's criminal history, courts must consider the chronological remoteness of any prior convictions as well as the gravity, nature, and number of prior crimes." Id. Knippenberg has seven criminal convictions, three juvenile adjudications, three adult probation violations, and one juvenile probation violation. He had amassed this record before committing the current crimes at the age of twenty-three. Although all of these prior crimes were relatively minor and mostly substance abuse-related, the sheer number of convictions, delinquency adjudications, and probation violations that Knippenberg had accumulated by a relatively young age must be considered a substantial aggravating circumstance, especially when considering the appropriate sentence for a Class D felony as opposed to a more severe crime.

The trial court did not find the existence of any significant mitigating circumstances. Knippenberg does not directly challenge this lack of finding of mitigating circumstances but does suggest that some existed in this case. One theme throughout Knippenberg's brief is that his substance abuse problems led to the present offenses, and such problems "explain" these offenses and warrant a reduced sentence. However, courts are not required to consider claims of substance abuse problems as mitigating. James v. State, 643 N.E.2d 321, 323 (Ind. 1994). Knippenberg has been convicted of numerous

substance abuse-related offenses and, according to the presentence report, has previously attended a program at a substance abuse clinic. Nevertheless, Knippenberg claimed that he committed these crimes, and patted down the children looking for drugs, because he was under the combined influence of methadone and Xanax. Knippenberg has had repeated opportunities to address his substance abuse issues but has failed to correct them and instead continues to commit substance abuse-related crimes. We fail to perceive that Knippenberg's substance abuse issues warrant mitigating weight.

Knippenberg also noted before the trial court and on appeal that he is required to pay child support for two children and, therefore, extended incarceration threatens hardship to them. Courts are not required to find that a defendant's incarceration will result in undue hardship upon his or her dependents. Davis v. State, 835 N.E.2d 1102, 1116 (Ind. Ct. App. 2005), trans. denied. Here, Knippenberg was found to be in contempt of court in September 2004 for failing to pay child support; in May 2005 he was threatened with incarceration if he missed another support payment; and in July 2005 he was jailed for thirty days because he still had failed to keep current with his support obligations. Additionally, it appears from the record that Knippenberg lost his job after being arrested for these offenses, and at the sentencing hearing stated that having a felony conviction might make him ineligible to return to that job. Knippenberg was inconsistent in making support payments before committing these offenses, which caused him to lose his source of income in any event. The extent of hardship to Knippenberg's dependents as a result of his extended incarceration is, at best, debatable and not necessarily entitled to significant mitigating weight.

The only possible mitigating circumstance that the trial court ought to have acknowledged was Knippenberg's plea of guilty to these offenses. Guilty pleas normally are entitled to some mitigating weight in sentencing; a defendant who pleads guilty deserves to have some mitigating weight extended to the guilty plea in return. Cotto v. State, 829 N.E.2d 520, 525 (Ind. 2005). The significance of this mitigating factor varies from case to case, however. See Hope v. State, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005). Knippenberg did receive a benefit from the guilty plea, because the State dismissed charges of Class C felony sexual misconduct with a minor, Class D felony sexual battery, and Class D felony possession of a controlled substance. Especially with respect to the sexual charges, however, it is unclear from the scant record before us whether the State would have been able to prove Knippenberg had the requisite mens rea to support convictions on those charges. Additionally, sentencing was left entirely to the trial court's discretion, meaning Knippenberg received no benefit from the plea with respect to sentencing. Finally, although Knippenberg did not plead guilty immediately after being charged, neither did he wait until the morning of trial to do so. In sum, we conclude that Knippenberg's guilty plea is a significant mitigating circumstance.

Having reviewed the sentencing statement offered by the trial court, we address whether Knippenberg's sentence is inappropriate under Appellate Rule 7(B). We do this while considering as part of that equation the findings made by the trial court in its sentencing statement. We understand that this is, by necessity, part of our analysis here, but it does not limit the matters we may consider. See Gibson, 856 N.E.2d at 149; see also McMahon, 856 N.E.2d at 750 (noting that review under Rule 7(B) is not limited "to

a simple rundown of the aggravating and mitigating circumstances found by a trial court."). Knippenberg received the maximum sentence for a Class D felony, three years. See Ind. Code § 35-50-2-7(a). Considering limitations on consecutive sentences for non-violent crimes arising from a single episode of conduct, the maximum aggregate sentence Knippenberg could have received in this case was four years, or the advisory sentence for Class C felonies. See I.C. § 35-50-1-2(e). Thus, Knippenberg received enhanced sentences for his convictions, but not the maximum possible aggregate sentence that he could have received.

Regarding the nature of the offenses, Knippenberg attempts to minimize the seriousness of his conduct by noting that he was not dressed like a police officer, nor did he display a badge or anything of that nature when he approached the group of children at the playground. He seems to imply that the children were excessively naïve. Regardless, the fact is that Knippenberg went to a playground, convinced a group of children that he was a police officer, and convinced them to submit to pat-down searches. Performing a pat-down search of a person is a serious invasion of privacy; that is why there are constitutional limitations as to when they may be performed. The invasion is much more egregious when the victim is young and an adult misleads the victim into thinking that the law requires submission to the pat-down, even if we were to assume that there was no sexual intent associated with it. We also note that Knippenberg victimized eight children. The existence of multiple victims of a crime is an appropriate justification for increasing the sentence for that crime. See French v. State, 839 N.E.2d 196, 197 (Ind. Ct. App. 2005), trans. denied. Finally, we reject Knippenberg's claim that his conduct caused no

harm. Aside from the invasion of the children's privacy, the mothers of four of the victims testified as to the negative impact Knippenberg's actions had on their children's trust in law enforcement officers.

Turning to Knippenberg's character, we reiterate the trial court's finding that he has accumulated an extensive criminal history at a relatively young age. Counterbalancing that somewhat is the fact that Knippenberg accepted responsibility for his actions by pleading guilty to eight offenses. However, given Knippenberg's criminal history and history of substance abuse, more specifically his failure to adequately address that abuse, we cannot accept his claim that it is unlikely he "would ever do something this stupid again." Appellant's Br. p. 5. Unfortunately, such a possibility seems very likely.

We conclude that the nature of the offenses here is egregious, given the number of victims, their age, and the fact that Knippenberg not only impersonated a police officer but thereby convinced children gathered at a playground to submit a gross invasion of their privacy. As for Knippenberg's character, we find his extensive criminal history to slightly outweigh his guilty plea. We conclude that a three-year aggregate term for eight Class D felony convictions, or one year less than the maximum possible Knippenberg could have received, is not inappropriate in light of the nature of the offenses and Knippenberg's character.

Conclusion

Knippenberg's sentence is not inappropriate. We affirm.

Affirmed.

BAILEY, J., and VAIDIK, J., concur.